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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/275,534	03/24/1999	PETER JAHN	BAYER10.168W	9884

7590 07/01/2004

NORRIS, MCLAUGHLIN & MARCUS, P.A.  
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NEW YORK, NY 10017

EXAMINER
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SORKIN, DAVID L

ART UNIT	PAPER NUMBER
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1723

DATE MAILED: 07/01/2004

#35

Please find below and/or attached an Office communication concerning this application or proceeding.

# Notice of Allowability

Application No.

09/275,534

Examiner

David L. Sorkin

Applicant(s)

JAHN ET AL.

Art Unit

1723

## -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the communication filed 24 February 2004.
2. ☒ The allowed claim(s) is/are 4,7,10-15,20 and 22-27.
3. ☒ The drawings filed on 27 April 1999 are accepted by the Examiner.
4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☒ All    b) ☐ Some\*    c) ☐ None    of the:
    1. ☒ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  6. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).**
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

### Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08),  
Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413),  
Paper No./Mail Date \_\_\_\_\_
7. ☐ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☒ Other re: interference request.

David L. Sorkin  
Examiner  
Art Unit: 1723

**ALLOWANCE** *(re: interference request)*

1. Applicant correctly points out that a request for suspension of action was filed 24 November 2003 with the RCE. Therefore, the request for interference filed 24 February 2004 is considered herein (but is not granted for the reasons set forth in detail below).

This notice of allowance supercedes the previous notice of allowance, which, as applicant explains, was premature in view of the request for suspension of action.

2. The instant application is not suitable for interference with Streiff US 6,394,644, for at least the following reasons:

a. All pending claims of the instant application are or depend from independent claim 23, which was added 03 June 2003, more than one year after issuance of Streiff US 6,394,644. Claim 23 is patentably distinct from all previously filed claims, as evidenced by the fact that none of the previously filed claims was considered allowable.

b. Each claim of Streiff requires "a generally ring shaped support structure having a central axis, concentric inner and outer, radially spaced, circumferentially extending surfaces, and first and second axially spaced, generally parallel edge surfaces, said inner surface defining a fluid flow path which extends along said axis, said edge surfaces being located in respective generally parallel transverse planes which are essentially perpendicular relative to said axis". Neither of the instant claims which applicant mentions (claims 12 and 23) in applicants request requires such a support or any similar support. Only instant claim 27, added by examiner's amendment 25 August 2003 (more than one year after the issuance of Strieff (US 6,394,644), recites a remotely similar structure.

c. The additional requirement of claim 13 of Strieff, "crossbars ... attached to said inner surface [of the support]" is not claimed in the instant application.

d. The additional requirement of claims 21 and 22 of Strieff, of plural spaced apart components within a given plane, is not claimed by the instant application.

e. The requirement of instant claim 23, the only pending independent claim, "individual perforations substantially central to the surface area of said planar surface" is not consistent with the invention of Streiff, which discloses and claims a series of spaced apart cross bars in a plane, rather than a perforated planar sheet of material. Applicant emphasized the distinction between a perforated sheet and plural spaced elements in applicant's remarks filed 03 June 2003 (page 10) stating, that "parallel beams" structures "teach away from **any** forms of holes (perforations)" (emphasis that of applicant's).

f. The requirement of instant claim 23, "the flow paths defined by perforations of one of said two planar surfaces having directions which directly or in extension impinge upon or cross the flow paths defined by the perforations of the other of said two planar surfaces", is not consistent with the structure disclosed or claimed by Stieff. In contrast to this requirement, an opening in one plane corresponds to solid material in the neighboring plane (see Figs. 1-3 of Streiff). The alternating openings of Strieff Figs. 1-3 are in contrast with the opposed perforations of the instant invention as illustrated in Figs. 1a-1c.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David L. Sorkin whose telephone number is 571-272-1148. The examiner can normally be reached on 9:00 -5:30 Mon.-Fri..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda L. Walker can be reached on 571-272-1151. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



David Sorkin

David L. Sorkin  
Examiner  
Art Unit 1723



CHARLES E. COOLEY  
PRIMARY EXAMINER